

### **REMARKS**

This Amendment is filed in response to the Office Action mailed June 30, 2003. Claims 1-13 are pending. New claims 14-17 are added for which support can be found, *inter alia*, throughout the specification, including within Examples 1-10. Claims 1-11 and 13 are presently amended. The allowance of claims 8-13 is noted with appreciation. Applicants respectfully request reconsideration of the rejection or objection of claims 1-7 in view of the foregoing remarks and amendments. No new matter has been added.

Claims 1-11 and 13 have been amended to more particularly point out and distinctly claim the present invention. More specifically, in each amended claim, the term "polynucleotide" has been deleted and replaced with the phrase "plasmid expression vector." No new matter is added by amendment to claims 1-11 and 13.

The specification has been amended to correct some editorial oversights. The numbering of the Tables in the Examples section of the original specification is incorrect. As such, original Tables 7-10 are now relabeled as Tables 6-9, respectively. The specification has been amended to reflect this change. Original Table 8, currently re-numbered Table 7, on page 47 of the specification has been further amended to correct an additional editorial oversight. This table represents the summary of data collected in the experiment presented in Example 10. All animals in that experiment were immunized with either 12.5 µg or 1.56 µg of plasmid expression vector V1JNS:gD, as stated on page 46, lines 31-33. The footnotes of original Table 8 have been corrected. No new matter has been added with the amendments to the specification.

### **Rejection of Claims 1, 2 and 6 Under 35 U.S.C. § 102(b)**

Claims 1, 2 and 6 were rejected under 35 U.S.C. § 102(b), as allegedly being "anticipated by any one of Wachsmann et al (Vaccine 10 (7), 447 (1992)), Rooney et al (Review of Infect. Diseases 13 (Suppl. 11), S898 (1991)), Aurelian et al (Reviews of Infect. Diseases 13 (Suppl. 11), S924 (1991)), or McDermott et al (Virology 169: 244 (1989))." Each of these references discloses the induction of an immune response in mice using an HSV glycoprotein encoding DNA contained within a viral vector, either a vaccinia virus or adenovirus vector. The Examiner states that pending claims 1, 2 and 6 are "broad enough to embrace the subject matter disclosed in any one of the references." Applicants respectfully overcome this rejection in light of the following amendments.

The claims have been amended to exclude HSV sequences contained within viral vectors. Thus, claims 1, 2 and 6 have been amended to delete reference to a "polynucleotide," replacing said terminology with the phrase "plasmid expression vector." Support for this amendment is found

throughout the specification, more specifically on page 14, lines 10-34, in the description and exemplification of expression vectors of the present invention containing a gene encoding an HSV antigen. Applicants assert that amendment of claims 1, 2 and 6 in this manner clearly differentiates the present invention from the cited prior art.

To maintain consistent usage of terminology throughout the recited claims, each pending claim referring to the term "polynucleotide" is currently amended to replace said term with the phrase "plasmid expression vector." No new matter is added by amendment to claims 1-11 and 13. As stated above, support for this amendment is found throughout the specification, specifically in the description of the expression vectors of the present invention. The scope of allowed claims 8-11 and 13 is not altered by this amendment.


In light of the amendment to claims 1, 2 and 6, Applicants respectfully request withdrawal of the rejection of these claims under 35 U.S.C. § 102(b).

#### Claim Objections

Claims 3-5 and 7 are objected to because they are dependent upon a rejected base claim. Applicants assert that this objection is overcome with the previously discussed amendment to claims 1, 2 and 6 to a form in condition for allowance. Therefore, it is respectfully requested that this objection be withdrawn.

In view of the amendments and comments herein, Applicants respectfully take the position that all claims are in proper form for allowance and earnestly solicit a favorable action on the merits. The Examiner is invited to contact the undersigned attorney if clarification is required on any aspect of this response, or if any of the claims are considered to require further amendment to be placed in condition for allowance after entry of this Amendment.

Respectfully submitted,

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